

# UTAH SCHOOL LAW UPDATE

Utah State Office of Education

September 2004

# **Legal Counsel For Educators**

Teachers accused of misconduct on the job, sued for a student's injuries, or facing other school-related lawsuits have free legal counsel in their corner.

State Risk Management will represent a teacher facing a lawsuit based on something that occurred at school. Whether it is a parent accusing the teacher of inappropriately touching a child, or an injured football player suing over a coach's alleged negligence, risk management will take the case, with a few caveats.

First, the division may take the case "with reservation." This does not refer to the state of mind of the attorney, it is a statutory concept meaning, if the teacher is found to be at fault, the teacher will have to pay the judgment.

A teacher seeking counsel from risk management will know up front if the division is taking the case "with reservation."

If Risk Management does not use those magic words, it will take responsibility for any financial liability imposed by the courts.

Risk Management also has the option of refusing to take a case where it finds sufficient evidence that the teacher has acted outside the scope of his or her employment.

As stated by Risk management Director Alan Edwards, "We usually do an investigation and make a determination whether to defend, defend with a reservation of the right not to pay a judgment if actions not covered by the Governmental Immunity Act are estab-

lished, or to decline to defend.

When it is hard to determine what happened, the most usual decision is to defend with a reservation of rights.

Without other evidence, a case based on an accusation would almost certainly be handled that way and a defense would be provided."

For example, the division may decline to represent a teacher accused of sexual misconduct with a student where there are a number of reliable eye witnesses who saw acts connected to the claims.

If risk management refuses a case and the teacher is subsequently exonerated in court, state law allows the teacher to seek reimbursement for his or her legal expenses from risk management.

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#### **UPPAC CASES**

- The Utah State Board of Education revoked the license of John Mitchell Taylor following his failure to report licensing action against him in another state.
- The State Board accepted a stipulated agreement for a two year suspension of Roxanne Gray's license. Ms. Gray's suspension results from employment at a junior high school while under the influence of alcohol.
- The State Board revoked the license of Kenneth Gee following his felony conviction for making a fraudulent insurance claim.
- The Board reinstated Gregory Hughes' license.

## **UPPAC Cases of the Month**

Many educators are unfamiliar with UPPAC and the effect it can have on the educator's license.

While some understand that the Commission investigates allegations of educator misconduct and recommends discipline measures against a license, few understand the widespread ramifications.

When the Commission recommends that the

State Board suspend or revoke a license, it is essentially recommending that the educator no longer work in the field, at least for a period of time.

Moreover, the Commission is recommending that the educator leave the field in all states.

If the State Board agrees with the Commission recommendation and suspends or revokes an educator's license, that action is reported to a national clearinghouse.

The clearinghouse is operated by the National Association of State Directors of Teacher Education and Certification (NASDTEC).

NASDTEC sends out a monthly report of educators added to its roll of

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#### Eye On Legislation

This school year begins at the same time that political campaigning starts to heat up.

While the presidential election is a foregone conclusion in Utah, important state races abound.

Clearly, the governor's race will have a major impact on education in Utah.

Jon Huntsman, Jr. and Scott Matheson, Jr. have both noted

the importance of education, but offer very different plans for promoting it..

Matheson has produced a comprehensive plan for education, available at his website (www.mathesonfor governor.com). The plan includes a variety of initiatives and is worth perusing.

Highlights of the Matheson plan include a program for choice within public schools. Matheson also proposes a long-term funding plan and more flexible accountability measures. He clearly

states his opposition to tuition tax credits and vouchers in the document.

Matheson also acknowledges the critical needs for early childhood development in his "Bridging the Gap

Initiative."

It is important to note that

Matheson's choice for Lieutenant Governor, Karen Hale, was a vital supporter of public education in the Utah Legislature.

Huntsman's views are available at his website (www.votehuntsman.com) as well.

He makes particular mention of his support for the Carson Smith Special Needs Scholarship bill and his belief that it should be expanded.

Huntsman's statements on educa-

tion are limited, but he appears to be a supporter of the business model for education. He mentions the importance of "market forces" to im-

prove public education and the need to share business practices and methods with public education.



#### **Recent Education Cases**

Cave v. Burt, (Ohio App.). A high school student could not sue his high school for injuries he received when he fell off the trunk of a car. The student rode on the trunk to deliver baseball bats from the school to the baseball field. The court ruled that riding on a car trunk is inherently, obviously dangerous and the student, therefore, assumed the risk that he would fall off.

Brandt v. Board of Education, (ND.

Ill.). A middle school gifted class created an unofficial tshirt with a picture of a physically disabled person and "Gifties" on it.

The students claimed their discipline for



violating the school dress code infringed on their First Amendment rights. The court ruled against the students noting that the shirt did not address a matter of public concern, but was merely "silly." As such, the school had a legitimate interest in preventing the students from wearing shirts that could be viewed as mocking the disabled.

Bergerson v. Salem-Keizer, (Or.

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#### **UPPAC** cases cont.

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infamy and member states (all 50, plus D.C., Dept. of Defense sites, U. S. territories and parts of Canada)

can check the clearinghouse to ensure that a teacher has not had a license revoked or suspended in any other jurisdiction.

Utah also has a state law that prevents the State Office of Education

from issuing a Utah license to any educator who has been suspended, revoked or is under investigation in another state.

Failure to inform the state office

that a license in another jurisdiction has been suspended, revoked or otherwise invalidated can also result in suspension or revocation of the educator's Utah license when the truth is discovered.

Therefore, educators who ignore or willfully violate the

rules of professional practices in

this, or any other state, stand a good chance of losing their privilege to teach in this or any other state.

The stakes are high, but the rules are not difficult for most educators to follow (UPPAC investigates about 50 educators per year out of 20,000+ active licensed educators). Be a professional on the job and a good citizen off and you should never be in a position to have your license taken from you by the State Board of Education and its Professional Practices Advisory Commission.

Utah State Office of Education

#### **UPPAC Member Profile—**

Juneil Lyon is one of two community representatives on the Utah Professional Practices Advisory Commission.

Ms. Lyon has a B.S. degree in Medical Technology and worked at the University Hospital's hematology lab until the birth of her first child.

Ms. Lyon sent six kids through Utah's public education system. She served as a room mother and PTA member. As her kids progressed, she too "graduated" to elementary PTA president, district council board member, secondary PTSA president, Region Director for Salt Lake District, member of the state PTA board of directors and

state PTA Education Commissioner.

During her 10 years of service on the state PTA board, Ms. Lyon attended all Education Interim Committee meetings and task force meetings,

it can be."

force meetings, and the 45-day legislative sessions. She has spoken up for education in legislative committee meetings, voicing her concerns and applying her experience to ensure public education in Utah "is the very best After "retiring" from PTA, Ms. Lyon was asked to fill a vacancy on UPPAC left by another community member. Since then, Ms. Lyon has been appointed to her own term on the Commission.

Her role on UPPAC "is not always pleasant," Ms. Lyon says, "but it can be satisfying to know that the interests and well-being of students is a primary concern and we can . . . help keep the professionalism of educators on a high level."

In her spare time, Ms. Lyon reads, sews, teaches an aerobics class and watches golf tournaments!

### **Your Questions**

Q: Why does my husband have to have a background check to help me in the classroom?

A: Utah law provides that any volunteer or employee who has "significant unsupervised access" to students must have a background check.

How "significant unsupervised access" is defined is left to the discretion of the school and/or district. As long as the school/district is not abusing that discretion to keep out people based on arbitrary decisions,

What do you do when...?

requiring volunteers to have background checks is not only permissible, it is highly recommended.

Q: Why can't my four year old who attended preschool in another state start kindergarten now?

A: Utah law is unequivocal on the age a child may start kindergarten in the state. No matter how advanced, enlightened or just plain brilliant a child is, he or she can only start kindergarten at a public school if he/she turns five by Sept 2 of the year the student's parents seek to enroll the child. U.C. § 53A-3-402(6).

However, once the child meets the deadline, if he/she is truly far too advanced for kindergarten, the school district can evaluate the

#### Recent Cases Cont.

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App.). A veteran elementary school teacher was dismissed following her arrest for driving a vaninto her estranged husband's truck and attempted suicide.

The court upheld the dismissal as reasonable, noting that the teacher's intentional conduct "adversely affected" her duty to "uphold the dignity of her profession."

Napier v. Centerville City Schools, (Ohio App.). A school district's dismissal of a bus driver with 26 years experience was upheld. The driver

failed to follow district policy after her morning route by neglecting a final

sweep of the bus when she returned to the garage. A



child was left asleep in the bus on an extremely hot day.

Choctaw Properties, L.L.C. v. Aledo Indep. Sch. Dist., (Tex. App.). The school board was immune from liability for statements made by a former superintendent within the

course of his duties.

The superintendent wrote a letter to a developer asserting that the developer's planned subdivision would fall within the district's boundaries.

Subsequently, the district denied admittance to a family in the subdivision. The family sued the developer for misrepresenting the status of the subdivision within the district and the developer sued the district for the superintendent's misrepresentation. The court ruled the district and superintendent immune from liability.

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

## Your Questions Cont.

(Continued from page 3) child to determine the proper placement.

Meanwhile, the child can attend any other private program or remain in the public preschool until he/she meets the age requirement.

There are certainly situations where a school will agree the child is ready for kindergarten, and will want to admit the student early, but the law does not provide any room for exceptions.

The cutoff age does not necessarily represent a decision about the maturity and ability of five year olds, it does reflect a legislative decision about the best allocation of scarce resources.

Q: I received a letter from UPPAC stating that I am being investigated. Will UPPAC verify for me

that Mrs. X made the complaint against me?

A: No. Per the Utah Government Records and Management Act, the source of a complaint to UPPAC is protected information. As such, it may not be divulged, even to the subject of the

complaint.

However, if the UPPAC investigation reveals that there has been sufficient unprofessional conduct, to justify licensing action, the educator would have the

opportunity to request a hearing. Depending on the circumstances, the source of the complaint might be called as a witness at the hearing. At that point, the educator would have the opportunity to confront his or her accuser.

It may be the case, however, that a UPPAC complaint comes from a third party who is simply carrying out his or her duty to report alle-

gations of misconduct. In that case, the source of the complaint may have little to offer except a secondhand account of what occurred.

The source of the complaint, might not be called under those circumstances, but the person who began accusing the educator of misconduct would be.

Again, the educator would have the opportunity to con-

front the source of the accusations in the hearing, though not the source of the complaint.